

## **NATURAL RESOURCES COMMISSION**

### **Meeting Minutes**

**September 5, 2007**

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, September 5, 2007. The following Commissioners were present: Chair, Alexander Easterday; Jamie Bemis, Steve Verrill and Associate Member, George Lewis. Delia Kaye, Natural Resources Administrator; and Katherine Holden, Natural Resources Assistant Administrator, were also present.

### **CONTINUANCES:**

#### **CONCORD WOLD, LLC – Annursnac Hill Rd & Commerford Rd / ANRAD – DEP File #137-929**

The Applicant is seeking confirmation by the Natural Resources Commission of wetland resource areas boundaries on the property

Applicant Jim White appeared. Rich Harrington, Stamski & McNary, and Dave Crossman of B&C Associates were also present.

Rich Harrington discussed revised plans stating that flags 332 & 333 were added and a StreamStats report on letterhead was submitted. Rich stated there are three intermittent streams.

Alexander Easterday noted only the portion of the wetlands approved by a previous Order of Conditions on parcel 2000-11 is shown. Dave Crossman stated the other areas were flagged on the site. Jamie Bemis stated the Commission previously requested that all the wetlands be shown on the plan. Dave Crossman stated the property owner believed that flagging the other portions of wetlands on the property would create potential hardship for the property owner.

Alexander Easterday stated the pond on the Benincasa parcel 2000-11 constantly discharges into the stream and that this segment of the stream, from the pond to Commerford Road, always flows. Rich Harrington agreed and noted that stream below the pond is still flowing now. Alexander Easterday discussed a potential argument that this segment of the stream is perennial with a Riverfront Area. This Riverfront Area could overlap onto adjacent parcels.

Rich Harrington stated this stream does not meet the watershed size requirement per the Riverfront Area regulatory definition.

Michael Grace, 15 Commerford Road, asked for a clarification of how a wetland is flagged during a dry year. Delia Kaye responded that wetlands are determined using three parameters: presence of hydric soils, wetland vegetation, and hydrology, and that these features can be observed in dry years.

Allan Dimock, 79 Commerford Road, asked about the definition of a perennial versus an intermittent stream.

Rich Harrington stated that although Baptist Brook is shown as perennial on the USGS map, one segment of this stream was not flowing for days and this dry condition was seen by the Commission during their site visit. Rich Harrington stated the Applicant will not be asking the Commission on a finding of intermittent status of Baptist Brook at this time.

Steven Lazar, 211 College Road, stated concern that there have been low flow times and asked how if this would affect the definition of resource areas. Delia Kaye explained that Bordering Vegetated Wetland is delineated using soils, vegetation, and hydrology and the Mean Annual High Water (MAHW) Line from which the Riverfront Area is delineated is based on features that do not change with a few dry months.

Margaret Dimock, 79 Commerford Road, stated the Benicasa property is wet all the time and discussed the stream status.

Alexander Easterday explained an intermittent versus a perennial stream. He stated the pond is fed by groundwater and the stream is fed by the pond. He stated technically the Commission could make the argument this was perennial. He also stated not all resource areas on adjacent properties have been completed. Dave Crossman stated groundwater is not taken into consideration.

Commission discussed this argument further but stated this may not stand up with DEP.

David Lebling, 618 Annursnac Hill Road, asked if the parcel adjacent to the Benicasa parcel was part of the project filing. Rich Harrington confirmed.

Michael Grace, 15 Commerford Road, commented on photos submitted by Mr. Dimock of the dry conditions of area.

George Lewis asked if the pond was included in calculating the watershed area. Rich Harrington stated yes.

Delia Kaye asked Rich Harrington whether the Acton appeal that DEP overturned dealt with a stream of similar nature and knew if DEP has had this similar situation. Rich Harrington stated they had this type of situation in Acton and provided information providing evidence of an intermittent stream.

Steve Verrill asked how the watershed size was calculated to understand the accuracy of this mapping.

Jamie Bemis discussed the certified vernal pools and stream status.

Rich Harrington discussed the existing lawn on the Benicasa parcel stating that the stream does not have riverfront characteristics and the presumption of wildlife habitat value could be

overcome. Delia Kaye stated this is only one of the seven public interests. Katie Holden stated the science seems to show that this stream is perennial even though it doesn't seem meet the WPA regulatory definition.

Delia Kaye discussed if a potential drought might be declared retroactively. The drought advisory committee that declared the last drought for DEP does not appear to exist anymore. This the second driest August recorded in the last 100 years. Jamie Bemis discussed researching this further.

Rich Harrington stated that a drought status might change a perennial status but would not change an intermittent status. Katie Holden stated the drought status would provide more evidence of the stream being perennial since it is still flowing during this time.

Delia Kaye asked about the flags around the pond. Dave Crossman stated this line was field surveyed using the retaining wall for one portion as the edge of pond, but none of the area was flagged, and that flagging would not change the buffer zone. Rich Harrington stated that should work be proposed, the Bank could be flagged.

The Commission asked that the Applicant continue to allow Division of Natural Resources staff to discuss a potential drought status with DEP.

Jim White, the Applicant, stated he would like to continue but chose to close the hearing.

Alexander Easterday explained that no new information could be submitted, all deliberations are public, and this would be discussed at the next Commission meeting on September 19, 2007. Jamie Bemis stated that the Applicant had the authority to allow the public on site visits, not the NRC, and that all decisions were discussed publicly at the hearings.

Robert Sekuler, 64 Strawberry Hill Road, asked whether the DEP drought advisory could still be part of the record because the hearing was closed. Delia Kaye stated this could still be discussed with DEP and that this is not considered new information.

Kim Novick, 53 Temple Road, asked about the appeal process. The Commission explained the appeal process.

Michael Grace, 15 Commerford Road, asked a drought question.

Steve Verrill moved to close the hearing. Jamie Bemis seconded. All so voted.

**THE COMMERFORD REALTY TRUST – 140 Commerford Road and 14B Commerford Road / ANRAD - Seeking confirmation of the wetland resource area boundaries on the property, DEP File #137.\*\*\***

The Applicant is seeking confirmation of the wetland resource area boundaries on the property from the Natural Resources Commission.

Rich Harrington, Stamski & McNary, and Dave Crossman of B & C Associates appeared on behalf of the Applicant.

Rich Harrington stated the Commission held a site walk. Rich Harrington discussed revised plans. The wetland between the driveways was added although this is not regulated under the WPA. The Riverfront Area and an intermittent stream are now shown on the plan. Rich Harrington discussed their response to a letter submitted by Ecotec.

Alexander Easterday asked if the added wetland line was flagged or if this wetland line was part of a previous delineation and this line was just turned on for the plan. Rich Harrington stated they just turned the line on to show on the plan. Alexander Easterday state this should be flagged in the field in order to be reviewed because Chuck Katuska, the Commission's wetland consultant, could not find these flags in the field. Rich Harrington stated the flags would be refreshed.

Delia Kaye e-mailed Chuck Katuska's letter to Rich Harrington and Dave Crossman earlier in the day and provided a hard copy to them at the meeting.

Alexander Easterday discussed Mr. Katuska's letter. Alexander Easterday stated the certified abutter list shows a different contact and asked that the correct name be provided for the property owner. The Commission stated Bruce Wheeler's signature is needed instead of Rich Harrington's on the Application, or a letter from Bruce Wheeler stating that Rich Harrington can sign as representative of the property owner.

Alexander Easterday discussed the ANRAD single family housing fee, and asked again whether this project was for single-family home work. Rich Harrington stated that to the best of his knowledge the ANRAD was for single-family home work. Delia Kaye asked whether either property owner was present at the hearing; Rich responded that they were not. Al Easterday discussed retroactive wetland filing fees if the project turns out to be something other than for a single family home. Rich Harrington agreed to pay any retroactive wetland filing fee if allowed.

Katie Holden stated there is no DEP File # and the DEP web site states that money is owed to DEP.

The Commission stated it would include a Finding stating they encourage the potential vernal pool to be examined in the spring and be certified if vernal pool species are present.

Becky Shannon, 127 Commerford Road, stated that attention should be paid to this vernal pool area and that this is a sensitive spot with many frogs.

Kim Novick, 53 Temple Road, asked if a road was put in, would this change the filing. Alexander Easterday explained this filing is for a wetland delineation only and no project was proposed at this time.

Rosemary Long, 141 Commerford Road, asked about which colors on the plan referenced which wetland resource areas. Dave Crossman stated the wetlands were only showed up to the lot line and agreed the wetlands did continue.

The hearing was continued to the September 19, 2007 meeting.

**GENOVA/MAXEY – 46 Shore Drive / Abbreviated NOI, DEP File #137-\*\*\***

This project involves constructing a shed, placement of two tool sheds, and after-the-fact installation of a fence within 100 feet of Bordering Vegetated Wetlands of White Pond.

Applicant, Arlene Genova appeared. Arlene discussed the revised plans showing the fence located 10 feet from wetlands.

The Commission asked that the fence be removed up to the 25-foot No Disturb Zone from wetlands. Delia Kaye stated the sheds are exempt since they are more than 50 feet from wetlands, and only if they do not cause erosion. There is Priority Habitat of Rare Species. Arlene Genova stated she would consider plantings along the property boundary.

This hearing is continued to September 19, 2007.

**BENNETT – 75 Bow Street / NOI – Construction of a garage within 100 feet of Bordering Vegetated Wetlands, Bordering Land Subject to Flooding, and the 200-foot Riverfront Area of the Mill Brook, DEP File #137-889.**

Applicant Rich Bennett appeared. John Minty reviewed and approved the 100-year flood plain calculations. The Commission asked that the proposed compensatory storage be located outside of the 25-foot No Disturb Zone. A memo dated September 5<sup>th</sup> listing the remaining outstanding issues was provided to Mr. Bennet. The Commission asked if the Applicant had Historic District Commission approval. Mr. Bennet stated he did. The hearing was continued until September 19, 2007.

**NEW APPLICATIONS:**

**EVANS – Lot 1A Aurora Lane / RDA #07-15 – Construct a single-family dwelling with removal of three trees located within the 100-foot Buffer Zone to Bordering Vegetated Wetland.** Applicant Jerry Evans appeared. The restriction and the proposed edge of lawn has been added to the plan. A drip line will be used to handle roof runoff. The Commission asked that photos and a photo map be submitted documenting the naturally vegetated area behind the house after the approved trees are cut. This will show the existing conditions in case future violations occur by new property owners.

The Commission discussed two special conditions: 1. a preconstruction site visit be held to review erosion controls/limit of work and to review the tree work. 2. pictures as discussed above be submitted to the file.

Steve Verrill moved to issue a Negative Determination #3 with two special conditions as noted above. Jamie Bemis seconded the motion. All so voted.

**THE JUSTICE RESOURCE INSTITUTE – 1749 Main Street / NOI – Removal of existing driveway and installation of a retaining wall and stairs to the lower garage area of the existing single-family dwelling located within the 100-foot Buffer Zone to Bordering Vegetated Wetland and Bank of the Assabet River, DEP File #\*\*\*.**

Michael Whitmore, architect, and Peter Gammie, P.E. Columbia Design Group, LLC, appeared. The project will remove 800 square feet of existing pavement. There is 5,242 existing impervious surface and approximately 4,518 square feet will remain (14% reduction). Proposed improvements to stormwater consist of a gravel strip with subdrain and catch basin with outflow to a dry well. A driveway section showing proposed grades was submitted.

Dave Burke, wetland scientist, delineated the wetlands. The Commission discussed a Finding stating the Mean Annual High Water Line for the Assabet River was not established for this filing. The Commission requested an Operation & Maintenance Plan be submitted stating who specifically shall be responsible for implementing the Plan.

**PUREGROUND, INC. (Murphy) / NOI – 1315 Old Marlboro Road – Installation of a new septic system and force main for an existing single-family dwelling located within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-\*\*\***

Bill Murphy, PureGround, Inc. appeared with property owners Michael and Deborah Wengrovitz. Tom Tidman delineated the wetlands. Bill Murphy stated other areas were explored to locate the septic system, but the best conditions were found at the rear of the property. A test pit in front found ledge which would require an expensive high tech mounded system that would remove trees. Equipment will need to cross the wetlands/ditch. Work is expected to occur this dry season, and metal plates will be used if needed. Approximately 240 square feet of wetlands will be temporarily disturbed and restored. The area will be restored with a native seed mix and the existing ferns will be restored with native species. A special condition will included requiring a planting plan to be submitted. The Board of Health has approved this project. The hearing was continued to the September 19<sup>th</sup> meeting.

#### **CLOSE HEARINGS/ISSUE PERMITS**

**JONES – 39 Musketaquid Road / NOI, DEP File #137-944**

Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue Riverfront Findings A & B. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue an Order of Conditions with Special Conditions 18-45. Steve Verrill seconded. All so voted.

#### **CERTIFICATES OF COMPLIANCE:**

**FELDBERG – 75 Buttricks Hill Road, DEP File #137-339**

Steve Verrill moved to close the hearing. Jamie Bemis seconded. All so voted.

## OTHER BUSINESS

### Approve August 15, 2007 Meeting Minutes

Steve Verrill moved to approve the August 15, 2007 minutes as amended. Jamie Bemis seconded. All so voted.

CPC Applications – Monty Lovejoy will be the NRC representative to both NRC applications.

Village Overlay Committee Liaison – The Committee would like a liaison from the Natural Resources Commission. Delia Kaye will obtain the charge and schedule and report back at the next meeting.

Agricultural Day (Sept. 15<sup>th</sup> 10am-2pm) – The Commission agreed to host a table between 10 and 12 pm

Old Calf Pasture violation update: The Town Manager, Al Easterday, and Delia Kaye met with Sandra Folke on August 24 to review the illegal tree clearing on Town land. Ms. Folke said that her ex-husband had cleared a few trees to “clean things up” over the past 30 years. The Town Manager told Ms. Folke that the Town views activity on their land without approval as a serious matter, and that this was probably the second most egregious violation he has seen in his tenure with the Town. The property owner agreed to submit a plan showing the property boundaries, the tree stumps on both her land and Town land, the remaining trees, and the debris piles. Al Easterday recommended that both she and her former husband attend the next NRC meeting to explain the violation to the Commission.

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Katherine Holden, Natural Resources Assistant Administrator